



Memorandum

DATE: May 9, 2022
TO: Transportation Interim Committee
FROM: Dan Lloyd, Energy Bureau Chief
SUBJECT: Electric Vehicle Liability Questions

Transportation Interim Committee (TIC) staff requested the Montana Department of Environmental Quality (DEQ) Energy Office respond to the following questions in advance of the TIC's May 19 meeting.

DEQ legal counsel worked with TIC legislative staff to provide additional background on EV related liability issues contained in Joe Carroll's separate memo. Please note that the contracting process and grant agreement language for EV charger projects that may be funded by the National Electric Vehicle Infrastructure (NEVI) program will specifically address indemnification and other questions outlined below. That process has not yet been finalized by DEQ or the Montana Department of Transportation (MDT) and may vary from the contract language used by DEQ for projects funded in part by Volkswagen settlement funds. However, DEQ and MDT will ensure that the process and agreements will be designed to protect Montana's interests.

Question 1: What are liability issues for EV charging stations on State-owned and private land?

Concern about liability specific to EV charging typically centers around potential damage to someone's property, in this case an electric vehicle that is damaged plugging into a malfunctioning charger or associated harm to a person using the station. To determine liability, the question of who owns and operates the EV charging station must first be addressed. Awards made by DEQ and MDT using future federal dollars will identify requirements for owners and operators and attempt to limit the States' liability and protect its interests.

As background, three DEQ grant agreements awarded in response to a 2019 funding opportunity for public Level 2 EV charging stations were made for chargers on State property, including the grounds of the Montana Historical Society, University of Montana-Missoula, and University of Montana-Western. In the remaining 12 DEQ grant agreements, including all the awards for Level 3 direct-current fast charger (DCFC) stations made in response to a 2020 funding opportunity, the State is neither the owner nor operator of the charging station. DEQ developed additional insurance and indemnification language in the grant agreements DEQ entered into with entities that own and operate the EV charging equipment.

Question 2: What the cost would be of putting a charging station on State-owned land?

The costs of putting a charging station on State-owned land would be similar to the costs of installation on private property. Major cost categories for EV charging stations include: EV

charging hardware, electrical upgrades, internet or networking upgrades, parking lot resurfacing & bollards (if required), and land leases (if applicable).

Factoring in these cost categories and assuming a dual port charging station, estimated installation for a few different types of chargers are:

- Level 2: \$5000-\$15,000
- Level 3/DCFC (50kw): \$30,000-\$90,000
- Level 3/DCFC (150kw): \$80,000-\$250,000

The total cost for the charging station can vary widely based on factors including type of charging hardware, required electric upgrades, and any associated installation and infrastructure upgrades. As a rule, the unit costs of Level 2 stations are significantly lower than the unit costs of DCFC stations. There is a wide range of installation costs associated with DCFC stations, due primarily to electric utility upgrades necessary to accommodate higher capacity chargers. It should be noted that these costs can vary widely and per unit savings can be realized when multiple charging units are installed in a single location.

Question 3: How would a public/private partnership arrangement work and how would we deal with liability issues?

The framework for a public-private-partnership (PPP) to be used for deployment of Montana's National Electric Vehicle Infrastructure (NEVI) funds provided under the Infrastructure Investment and Jobs Act is still being developed by DEQ and the Montana Department of Transportation. That framework will be outlined by DEQ and MDT in Montana's NEVI Deployment Plan that must be submitted by August 1 and be approved by a joint office of the U.S. Departments of Transportation and Energy prior to any funds being released. The Plan will include input from Montana stakeholders gathered during public meetings and a public survey and will address requirements for use of the funding provided in the federal legislation and additional federal laws around transportation funding.

There are still various scenarios under consideration for how the funds will be administered and the ultimate structure of the PPP. The State's primary role will be to identify segments of the approved corridors to prioritize and provide a process by which private entities will apply for the funding, with the State administering the process according to state and federal procurement requirements. As a hypothetical example, Montana could establish a corridor from I-94 east of Billings to the North Dakota border prioritizing funding for three locations no more than 100 miles apart. The State would then release a request for applications for private entities to provide specific site locations and cost estimates to build out that corridor. Ultimately, the private entity selected for a funding award—based on criteria established in the RFA—would own and operate the EV charging infrastructure. The format of how the funds will roll out will be determined by federal and state parameters and the input provided by Montanans in development of the plan.

The funding agreement would be drafted in a way that shifts liability for any damage to the owner of the charging station, to the extent possible. For example, under awards for charging stations made using the VW trust fund, Montana DEQ elected to require private parties to carry insurance on behalf of the State and indemnify the State should there be a lawsuit around liability for damages associated with the charging infrastructure.

Question 4: What are the concerns about grid capacity, and will Montana have enough electricity to power these vehicles?

The owners of electrical transmission lines and generation and distribution facilities—regulated utilities, private companies, rural electric cooperatives, and federal agencies—have evolved over more than a century to meet the changing needs of residential, commercial, and industrial loads. While electric loads will grow as transportation increasingly electrifies, there are processes in place that require utilities to plan for changes years and even decades into the future. That said, the impacts EVs will have on the grid is a concern that Montana and other states recognize as legitimate, especially as medium and heavy-duty vehicle electrification grows.

Currently, Montana has laws in place that require regulated utilities to submit resource plans at regular intervals to the Montana Public Service Commission to demonstrate planning and forecasting to meet these changing demands. These requirements are codified in Montana's Integrated, Least-Cost Resource Planning and Acquisition Act in Title 69, Chapter 3, part 12.

Preliminary data indicate that expected electricity consumed by EVs travelling along designated alternative fuel corridors in Montana (I-15, I-90, I-94, U.S. Hwy 93 and U.S. Hwy 2) is expected to reach between 61 and 81 GWh in 2030, depending on weather and driving conditions. For comparison, Montana electricity sales totaled 14,584 GWh in 2019^[2], meaning an additional 61 GWh would be an increase of 0.4%, and 81 GWh would represent less than a 0.6% increase over today's electricity sales.

Question 5: Please provide a copy of the agreement between MDT and DEQ.

The agreement between MDT and DEQ on administration of the federal funding remains under development. The two agencies are meeting at least every two weeks to coordinate ongoing outreach required for development of the NEVI Deployment Plan and move toward a formal agreement for program administration. Since the announcement of DEQ and MDT's partnership to develop the NEVI Deployment Plan prior to the last TIC meeting, the agencies have participated in 20 public stakeholder meetings that included nearly 90 individuals from electric utilities, automobile dealers, charging station companies, businesses, non-profits, and entities that could install charging infrastructure. A Public Survey that will remain open until June 30 has received over 200 responses as of May 4. DEQ and MDT will continue to collaborate through the outreach process and drafting of the Deployment Plan to ensure the federal dollars are awarded efficiently and in a manner that meets all legal requirements of the federal legislation and protects the best interests of the State of Montana and its people.

Contact information:

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^[2] U.S. Energy Information Administration - EIA - independent statistics and analysis. EIA. (n.d.). Retrieved January 31, 2022, from <https://www.eia.gov/electricity/state/Montana/>



U.S. Department
of Transportation
**Federal Highway
Administration**

Notice

Subject:

**APPORTIONMENT OF FISCAL YEAR (FY) 2022 HIGHWAY
INFRASTRUCTURE PROGRAM FUNDS FOR THE NATIONAL
ELECTRIC VEHICLE INFRASTRUCTURE FORMULA PROGRAM
PURSUANT TO THE INFRASTRUCTURE INVESTMENT AND JOBS ACT**

Classification Code

Date

Office of Primary Interest

N4510.863

February 10, 2022

HCFB-10

1. **What is the purpose of this Notice?** Title VIII of division J of the Infrastructure Investment and Jobs Act (Bipartisan Infrastructure Law), Public Law (Pub. L.) 117-58, appropriated \$9,454,400,000 for Highway Infrastructure Programs (HIP) for FY 2022. Of such amount, \$1,000,000,000 shall be set aside for the National Electric Vehicle Infrastructure (NEVI) Formula Program. This Notice transmits the certificate of apportionment for HIP funds for the NEVI Formula Program. The apportionment is effective immediately.

The remainder of the FY 2022 HIP funding shall be set aside for other activities that are not the subject of this Notice. This includes \$5,500,000,000 set aside for a bridge replacement, rehabilitation, preservation, protection, and construction program; \$250,000,000 set aside for construction of the Appalachian Development Highway System as authorized under section 1069(y) of Pub. L. 102-240; \$640,000,000 set aside for the Nationally Significant Freight and Highway Projects Program under section 117 of title 23, United States Code (U.S.C.); \$1,847,000,000 set aside for the Bridge Investment Program under section 124 of title 23, U.S.C.; \$30,000,000 set aside for the Reduction of Truck Emissions at Port Facilities Program under section 11402 of division A of the Bipartisan Infrastructure Law; \$19,000,000 set aside for the University Transportation Centers Program under section 5505 of title 49, U.S.C.; \$100,000,000 set aside for the Reconnecting Communities Pilot Program under section 11509 of division A of the Bipartisan Infrastructure Law; and \$68,400,000 set aside for the Construction of Ferry Boats and Ferry Terminal Facilities Program under section 147 of title 23, U.S.C.

2. **What amount is available for distribution under this Notice?**
 - a. The Bipartisan Infrastructure Law authorizes the Federal Highway Administration (FHWA) to retain, for operations and administration of FHWA, up to 1.5 percent of the amounts appropriated for the NEVI Formula Program.
 - b. The applied administrative takedown from funds appropriated for the NEVI Formula Program is \$15,000,000.
 - c. In addition, FHWA shall set aside not more than \$300,000,000 from funds

appropriated for the NEVI Formula Program in FY 2022 to establish and carry out the duties of a Joint Office of Energy and Transportation, and shall set aside 10 percent (\$70,000,000) from funds appropriated for the NEVI Formula Program (after the set aside for the Joint Office) for grants to States or localities that require additional assistance to strategically deploy electric vehicle charging infrastructure.

- d. Therefore, the amount of funds available for distribution to the States under this Notice is \$615,000,000 after the application of an administrative takedown of \$15,000,000 and set-asides of \$370,000,000.

3. What is the availability of these funds?

- a. The funds resulting from this apportionment for the NEVI Formula Program are available for obligation until expended.
- b. The funds resulting from this apportionment are available for obligation immediately, except as outlined under paragraph 5(c) below, and are not subject to any limitation on obligations.
- c. The program code to be used when obligating these funds is as follows:

Program Code	Program Description	CFDA Number
Y130	National Electric Vehicle Infrastructure Formula Program	20.205

4. What is the background information for the National Electric Vehicle Infrastructure Formula Program?

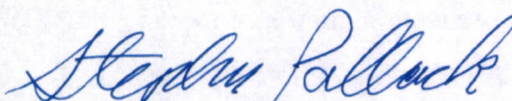
- a. Subject to the minimum standards and requirements established by the Secretary of Transportation, in coordination with the Secretary of Energy and in consultation with relevant stakeholders, the funds resulting from this apportionment are eligible to be obligated for:
 - (i) the acquisition or installation of electric vehicle charging infrastructure;
 - (ii) operating assistance for costs allocable to operating and maintaining electric vehicle charging infrastructure acquired or installed under this program, for a period not to exceed 5 years;
 - (iii) the acquisition or installation of traffic control devices located in the

right-of-way to provide directional information to electric vehicle charging infrastructure acquired, installed, or operated under this program;

- (iv) on-premises signs to provide information about electric vehicle charging infrastructure acquired, installed, or operated under this program;
 - (v) development phase activities relating to the acquisition or installation of electric vehicle charging infrastructure, as determined by the Secretary; or
 - (vi) mapping and analysis activities to evaluate, in an area in the United States designated by the eligible entity, the locations of current and future electric vehicle owners, to forecast commuting and travel patterns of electric vehicles and the quantity of electricity required to serve electric vehicle charging stations, to estimate the concentrations of electric vehicle charging stations to meet the needs of current and future electric vehicle drivers, to estimate future needs for electric vehicle charging stations to support the adoption and use of electric vehicles in shared mobility solutions, such as micro-transit and transportation network companies, and to develop an analytical model to allow a city, county, or other political subdivision of a State or a local agency to compare and evaluate different adoption and use scenarios for electric vehicles and electric vehicle charging stations.
- b. After reserving the applicable administrative takedown and set-asides described in paragraph (2), the funds available for distribution to States, as defined in 23 U.S.C. 101, have been apportioned to the States in the proportion that the total base apportionment or allocation determined for the State under section 104(c) or section 165 of title 23, U.S.C., for that fiscal year bears to the total base apportionments or allocations for all States under section 104(c) and section 165 of title 23, U.S.C., for that fiscal year.
- c. Each State is required to submit, by a deadline to be established by the Secretary, a plan describing how such State intends to use NEVI Formula Program funds distributed to the State.
- (i) If a State fails to submit the required plan by the deadline, or if the Secretary determines that a State has not taken action to carry out its plan, the Secretary may withhold or withdraw, as applicable, NEVI Formula Program funds made available to the State for the fiscal year and award such funds on a competitive basis to local jurisdictions within the State for use on projects that meet the eligibility requirements of the NEVI Formula Program.

- (ii) Prior to the Secretary making a determination that a State has not taken actions to carry out its plan, the Secretary shall notify and consult with the State, and identify actions that can be taken to rectify concerns, and provide at least 90 days for the State to rectify concerns and take action to carry out its plan.
 - (iii) The Secretary shall provide notice to a State on the intent to withhold or withdraw funds not less than 60 days before withholding or withdrawing any funds, during which time the State shall have an opportunity to appeal a decision to withhold or withdraw funds directly to the Secretary.
 - (iv) If the Secretary determines that any funds withheld or withdrawn from a State cannot be fully awarded to local jurisdictions within the State consistent with the purpose of the NEVI Formula Program, any such funds remaining shall be distributed among other States (except States for which funds for that fiscal year have been withheld or withdrawn) in the same manner as funds distributed for that fiscal year under subparagraph 4(b), except that the ratio shall be adjusted to exclude States for which funds for that fiscal year have been withheld or withdrawn. Such funds shall only be available to carry out the NEVI Formula Program.
- d. The funds may be used to contract with a private entity for acquisition and installation of publicly accessible electric vehicle charging infrastructure and the private entity may pay the non-Federal share of the cost of a project funded under this program.
- e. The funds shall be for projects directly related to the charging of a vehicle and only for electric vehicle charging infrastructure that is open to the general public or to authorized commercial motor vehicle operators from more than one company.
- f. Any electric vehicle charging infrastructure acquired or installed with the funds shall be located along a designated alternative fuel corridor.
 - (i) If a State determines, and the Secretary certifies, that the designated alternative fuel corridors in the States are fully built out, then the State may use the funds for electric vehicle charging infrastructure on any public road or in other publicly accessible locations, such as parking facilities at public buildings, public schools, and public parks, or in publicly accessible parking facilities owned or managed by a private entity.

- g. Except as otherwise provided, the funds shall be administered as if apportioned under chapter 1 of title 23, U.S.C.
 - h. Pursuant to 23 U.S.C. 109(s)(2), notwithstanding any other provision of law, a project to install electric vehicle charging infrastructure using funds provided under the NEVI Formula Program shall be treated as if the project is located on a Federal-aid highway.
 - i. The Federal share payable for the cost of a project funded under the NEVI Formula Program is 80 percent.
 - j. The funds are not transferable under section 126 of title 23, U.S.C.
5. **What is the distribution of funds for the National Electric Vehicle Infrastructure Formula Program?**
- a. The Bipartisan Infrastructure Law appropriates a total of \$1,000,000,000 for FY 2022 in HIP funds to provide funding to States to strategically deploy electric vehicle charging infrastructure and to establish an interconnected network to facilitate data collection, access, and reliability.
 - b. The amount of FY 2022 funds available for distribution to the States is \$615,000,000 after the application of an administrative takedown of \$15,000,000, a set-aside of \$70,000,000 for States or localities that require additional assistance to strategically deploy electric vehicle charging infrastructure, and a one-time set-aside of \$300,000,000 to establish and carry out the duties of a Joint Office of Energy and Transportation. The attached Table 1 shows the State-by-State distribution of funds.
 - c. Funds will not be made available to a State for obligation until that State's Electric Vehicle Infrastructure Deployment Plan has been submitted to the Joint Office of Energy and Transportation and approved by FHWA.
6. **What action is required?** Division Administrators should ensure that copies of this Notice are provided to the State departments of transportation.



Stephanie Pollack
Deputy Administrator

Attachments

**CERTIFICATE OF APPORTIONMENT FROM
THE SUM OF \$615,000,000 APPROPRIATED
FOR THE HIGHWAY INFRASTRUCTURE PROGRAM FOR THE NATIONAL
ELECTRIC VEHICLE INFRASTRUCTURE FORMULA PROGRAM**

TO—

The Secretary of the Treasury of the United States and the State departments of transportation:

Pursuant to the Infrastructure Investment and Jobs Act, title VIII of division J, Public Law 117-58, and the delegation of authority from the Secretary of Transportation to the Federal Highway Administration (FHWA) Deputy Administrator, section 1.85 of title 49, Code of Federal Regulations, I certify—

First, that pursuant to the Infrastructure Investment and Jobs Act, title VIII of division J, Public Law 117-58, the amount appropriated for the Highway Infrastructure Program (HIP) National Electric Vehicle Infrastructure (NEVI) Formula Program, for the fiscal year ending September 30, 2022, is \$1,000,000,000.

Second, that pursuant to the Infrastructure Investment and Jobs Act, title VIII of division J, Public Law 117-58, of the amount appropriated for the HIP NEVI Formula Program, the Federal Highway Administration will retain \$15,000,000 for operations and administration of FHWA.

Third, that pursuant to the Infrastructure Investment and Jobs Act, title VIII of division J, Public Law 117-58, of the amount appropriated for the HIP NEVI Formula Program, FHWA has set aside \$300,000,000 to establish and carry out the duties of a Joint Office of Energy and Transportation.

Fourth, that pursuant to the Infrastructure Investment and Jobs Act, title VIII of division J, Public Law 117-58, of the amount appropriated for the HIP NEVI Formula Program, FHWA has set aside \$70,000,000 for States or localities that require additional assistance to strategically deploy electric vehicle charging infrastructure.

Fifth, that after the application of the administrative takedown and set asides, the amount of funds available for distribution to the States, the District of Columbia, and Puerto Rico for the HIP NEVI Formula Program is \$615,000,000.

Sixth, that I have computed the apportionment to each State, the District of Columbia, and Puerto Rico of the amounts appropriated for the HIP NEVI Formula Program in the manner provided by law.

Seventh, that the sums that are hereby apportioned to each State, the District of Columbia, and Puerto Rico, effective immediately, are respectively as follows:

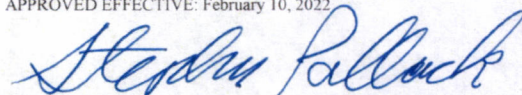
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

N4510.863 - TABLE 1

APPORTIONMENT OF HIGHWAY INFRASTRUCTURE PROGRAM
FUNDS FOR THE NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE
FORMULA PROGRAM PURSUANT TO THE BIPARTISAN
INFRASTRUCTURE LAW, TITLE VIII OF DIVISION J, PUBLIC LAW 117-58

State	National Electric Vehicle Infrastructure Formula Program
Alabama	11,738,801
Alaska	7,758,240
Arizona	11,320,762
Arkansas	8,010,850
California	56,789,406
Colorado	8,368,277
Connecticut	7,771,342
Delaware	2,617,339
Dist. of Col.	2,468,807
Florida	29,315,442
Georgia	19,978,342
Hawaii	2,616,956
Idaho	4,425,511
Illinois	21,998,178
Indiana	14,743,125
Iowa	7,604,168
Kansas	5,847,059
Kentucky	10,280,470
Louisiana	10,859,512
Maine	2,856,158
Maryland	9,298,080
Massachusetts	9,397,238
Michigan	16,290,764
Minnesota	10,089,418
Mississippi	7,483,268
Missouri	14,647,722
Montana	6,348,350
Nebraska	4,472,243
Nevada	5,618,414
New Hampshire	2,556,450
New Jersey	15,448,790
New Mexico	5,681,977
New York	25,971,644
North Carolina	16,137,196
North Dakota	3,841,352
Ohio	20,739,853
Oklahoma	9,812,934
Oregon	7,733,679
Pennsylvania	25,386,631
Puerto Rico	2,020,490
Rhode Island	3,383,835
South Carolina	10,360,855
South Dakota	4,363,463
Tennessee	13,074,884
Texas	60,356,706
Utah	5,372,731
Vermont	3,140,247
Virginia	15,745,244
Washington	10,489,110
West Virginia	6,761,785
Wisconsin	11,642,061
Wyoming	3,963,841
Total	615,000,000
Program Code	Y130

APPROVED EFFECTIVE: February 10, 2022



DEPUTY FEDERAL HIGHWAY ADMINISTRATOR